BEFORE THE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
TRADE POLICY STAFF COMMITTEE

SECTION 203 INVESTIGATION
OF CERTAIN STEEL

PUBLIC RESPONSE ON POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACTION OF 1974 WITH REGARD TO IMPORTS OF STAINLESS STEEL FLANGES AND FITTINGS

Filed on Behalf of:
Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc.

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I. INTRODUCTION

This submission, which responds to comments filed with the Trade Policy Staff Committee ("TPSC") concerning options for action under section 203(a)(3) of the Trade Act of 1974, is filed on behalf of domestic producers of stainless steel butt-weld pipe fittings Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (the "domestic stainless fittings industry"). This submission is made in relation to the U.S. International Trade Commission's ("ITC" or "Commission") product category of Stainless Steel Flanges and Fittings ("stainless fittings") and comes in response to the notice published in the Federal Register by the TPSC. See 66 Fed. Reg. 54,321 (Oct. 26, 2001). Arguments raised by those parties in opposition to relief are addressed in turn below.

II. THE STAINLESS STEEL FLANGES AND FITTINGS INDUSTRY HAS BEEN SERIOUSLY INJURED AND REQUIRES A STRONG IMPORT REMEDY

In its comments, the Association of European Quality Flange Manufacturers argues that the ITC's tie vote on stainless flanges and fittings should be interpreted as a negative determination.[1] As outlined below, the case of import-caused serious injury in relation to the stainless steel flange and fittings industry is compelling, and the industry needs and deserves a remedy under Section 203.

The statute provides that when the Commission is equally divided with respect to an injury determination under section 202(b) of the Trade Act of 1974, "the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission." 19 U.S.C. § 1331(d)(1). Thus, the statute permits the President to

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[1] Comments of the Association of European Quality Flange Manufacturers Regarding Presidential Action Under Section 203, Jan. 4, 2002 ("European Flange Comments"). The comments of the European Flange Manufacturers were submitted specifically in relation to stainless steel flanges. However, to the extent that those comments reflect on the overall product category of stainless steel flanges and fittings, they are addressed herein on behalf of the domestic producers of stainless steel butt-weld fittings.

determine that a split vote is an affirmative finding of serious injury. Indeed, in a recent Section 201 investigation on imports of certain steel wire rod, the President determined that a similar evenly-divided vote by the Commission was an affirmative vote of injury and granted relief to the industry. See Proclamation No. 7273, 3 C.F.R. 24 (2001).

The divided injury vote did not alter the Commission's statutory obligations with respect to remedy, and the Commission properly forwarded to the President the remedy recommendations issued by those Commissioners who found serious injury to the domestic industry. See 19 U.S.C. § 2252(e)(6). Nothing in the statute indicates that Congress intended the recommendations from an equally-divided Commission to be somehow mitigated or reduced. By the same token, nothing in the statute directs the President to adjust his remedy according to the number of supporting affirmative Commission votes or implies that evenly-split injury determinations warrant a weaker remedy. For these reasons, the President should not take the split Commission injury determination into account when fashioning an effective import remedy for the stainless steel flanges and fittings industry.

While much of the information was not released publicly, the information available from the record of the Commission's investigation provides a strong case that the domestic stainless fittings industry was seriously injured by increasing imports. Imports of stainless fittings increased by 73.5 percent between 1996 and 2000, among the largest of any of the product categories examined in the investigation, and all six Commissioners found that this surge met the

statutory criterion for increased imports.[2] The result, as stated by Chairman Koplan, was "a dramatic increase in the market share of stainless fittings imports."[3]

Those Commissioners that voted in the affirmative found that the domestic industry suffered significant declines over the period of investigation ("POI") in terms of levels of production, shipments, market share, capacity utilization, employment, sales volumes, and profitability.[4] As noted by Commission Bragg, "nearly every indicator of the health of the domestic industry trended downward over the period of investigation."[5] Even those Commissioners that voted in the negative noted that "a number of the industry's trade and financial indicia declined during the period of investigation."[6]

The public data show that imports of stainless fittings undersold domestic producer prices in every possible comparison and that the margins of underselling were among the worst shown for any product. As a result, domestic producer prices plummeted over the POI, with prices 39 percent lower in the last quarter of the POI than in the first quarter.[7] As summarized by Chairman Koplan, "imports seriously depressed and suppressed domestic prices of stainless fittings."[8] In the face of the dramatic growth in import market share and pervasive underselling on the part of the imports, each of the three commissioners voting in the affirmative found that

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2 Steel, Determinations and Views of Commissioners, Inv. No. TA-201-73, USITC Pub. 3479 ("USITC Pub. 3479") at 249.

3 Id. at 266.

4 Id. at 266, 289, 303, and 350-351.

5 Id. at 289.

6 Id. at 252.

7 Id. at STAINLESS 85 and 88.

8 Id. at 267.

increased imports were a substantial cause of the serious injury suffered by the domestic stainless fittings industry.

As noted at the Commission's injury hearing, conditions for the domestic industry producing stainless flanges and fittings have not improved since June 2001, the end of the Commission's POI. Indeed, market conditions have actually worsened, and current order levels provide no indication of a turnaround in 2002.

In summary, there is ample evidence that imports of stainless flanges and fittings have increased significantly and resulted in serious injury to the domestic industry. Those Commissioners that voted in the affirmative have written compelling opinions, and have acknowledged that there is a strong causal connection between the serious injury suffered and the increased imports. For this reason, the President should implement a strong remedy in relation to imports of stainless flanges and fittings.

III. IMPORTS FROM THE NAFTA COUNTRIES SHOULD BE INCLUDED IN THE REMEDY IMPOSED ON STAINLESS STEEL FLANGES AND FITTINGS

A. The Commission Has Properly Forwarded Its Affirmative Determinations on Imports From Canada and Mexico to the President

In its comments to the TPSC, AvestaPolarit Oy has argued that no trade restrictions of any kind should be put into place on imports of stainless steel flanges and fittings from the NAFTA countries.[9] As outlined below, the arguments of AvestaPolarit are misplaced, and the remedy to be put into place on the product group of stainless flanges and fittings should be applicable to imports from Canada and Mexico.

In contradiction to the claims put forward by AvestaPolarit, the ITC has properly forwarded its determination in relation to Canada and Mexico for the stainless flanges and

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[9] AvestaPolarit Oy Comments on Presidential Action Under Section 203, Stainless Steel Flanges and Fittings, Jan. 4, 2002 ("AvestaPolarit Comments").

fittings product grouping as an affirmative determination. The statute, at 19 U.S.C. § 3371, directs the Commission when making an affirmative determination to make findings as to NAFTA. The "Commission" making the affirmative determination consists only of those commissioners voting in the affirmative on injury.[10] This is consistent with the language of 19 U.S.C. § 2252(e)(6), which makes clear that only those commissioners voting in the affirmative constitute the Commission for purposes of the remedy recommendation -- which necessarily includes a determination whether Canada and Mexico are appropriately included in any relief. Commission precedent supports this interpretation.[11]

B. The Record Evidence Supports the Imposition of a Remedy on Imports From Canada and Mexico By the President

Once the Commission passes forward its determination, under 19 U.S.C. § 3372(a), the President performs his own analysis as to whether to take action with respect to imports from a NAFTA country, and that analysis largely parallels that performed by the Commission (i.e., whether the imports, considered individually, account for a substantial share of total imports, and whether imports from the NAFTA country contribute importantly to the serious injury, or threat thereof, found by the ITC). Thus, the determination of the Commission in relation to NAFTA imports is clearly not controlling of the actions of the President; there would be no reason for the provision of a parallel analysis by the President if he were not allowed to draw his own conclusions.

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[10] In the case of stainless flanges and fittings, those voting in the affirmative were Chairman Koplan, Commissioner Bragg, and Commissioner Devaney.

[11] See Certain Steel Wire Rod, Inv. No. TA-201-69, at I-4, n.4 (July 1999) ("Only Commissioners making an affirmative determination . . . were required to make findings with respect to imports of certain steel wire rod from Canada or Mexico.").

In the current analysis, the affirmative determinations in relation to stainless steel flanges and fittings from Canada and Mexico are properly before the President. The President must now perform his own analysis as to whether to take action with respect to imports from these countries. In this context, the President and the TPSC should be aware that AvestaPolarit has misinterpreted the record in relation to these imports.

AvestaPolarit claims that imports of stainless flanges and fittings from Canada did not account for a "substantial share" of total U.S. imports because they were not among the top five source countries for the 1998 - 2000 period overall.[12] However, as shown in AvestaPolarit's own data, imports from Canada were among the top five sources for stainless flanges and fittings in each of the years 1998, 1999, and 2000.[13] Contrary to AvestaPolarit's claims, Commissioners Bragg and Devaney correctly concluded that Canada was among the five largest sources of imports of stainless flanges and fittings in 1998 through 2000, and thus constituted a substantial share of imports.

While it is true that imports from Mexico were not among the five largest import sources in any of the years from 1998 through 2000, 19 U.S.C. § 3371(b)(1) states that NAFTA imports "normally shall not be considered to account for a substantial share of total imports" if they are not among the top five suppliers (emphasis added). Based on this provision of the statute, Commissioners Bragg and Devaney both properly found that Mexican imports did account for a

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12 AvestaPolarit Comments at 12.

13 Id. These data show that Canada was the fifth largest source of stainless flanges and fittings in each year from 1998 through 2000.

substantial share of imports, due to their significant share of the market and their substantial increase throughout the POI.[14]

In relation to the second prong of the NAFTA analysis, Commissioners Bragg and Devaney both found that imports from Canada and Mexico contributed importantly to serious injury.[15] Indeed, imports of stainless flanges and fittings from both Canada and Mexico increased at a faster rate from 1996 to 2000 than did U.S. imports generally. While imports of stainless flanges and fittings from all sources grew by 73.5 percent over this period, those from Canada grew by 76.5 percent and those from Mexico increased by 285.3 percent.[16] In light of these trends, the President should similarly draw the conclusion that imports from Canada and Mexico accounted for a substantial share of imports and contributed importantly to the serious injury caused by imports, and impose a remedy in relation to imports of stainless flanges and fittings from those countries.

While AvestaPolarit has also argued that certain members of the domestic stainless flanges and fittings industry do not support the imposition of a remedy in relation to imports from one or the other of the NAFTA countries, the domestic producers of stainless steel butt-weld pipe fittings wish to reiterate their deep concern in relation to such imports. Canada has been the largest source of imports of stainless steel butt-weld pipe fittings (HTSUS 7307.23.0000) since 1997, and Mexico has gone from a relatively small supplier of the product in 1996 to the fifth largest source in interim 2001.[17] Because any remedy put into place by the

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14 USITC Pub. 3479 at 305 and 351.

15 Id.

16 USITC Pub. 3479 at STAINLESS-19.

17 U.S. Department of Commerce statistics (HTSUS 7307.23.0000) from USITC dataweb.

President will have to be implemented on the basis of individual HTS numbers, and because the primary concern of the stainless steel butt-weld pipe fittings industry is in relation to imports of their specific product, the limitation of a remedy on imports from Canada and Mexico to HTS 7307.23.0000 would be acceptable to the industry.[18]

C. NAFTA Compensation Requirements Should Not Preclude the Imposition of a Remedy on Imports From Canada and Mexico

Finally, AvestaPolarit has raised the argument that any trade restrictions against imports from Canada or Mexico would require compensation to those countries, thereby increasing the economic cost of the remedy. It is possible, however, to implement a remedy that would entail no net cost to the U.S. Treasury. For this reason, the issue of compensation should not preclude the imposition of a remedy in relation to imports from the NAFTA countries.

If the President honors the request of the domestic industry to impose a tariff on imports of stainless fittings from all source countries (a tariff of 40 percent for the first year has been requested by the domestic industry, although the argument would also hold true for any other level of tariff), such tariff will add revenues to the U.S. Treasury in each year it is imposed. In order to fulfill its commitment to compensation under the NAFTA, the U.S. government could commit such funds collected annually on imports from Canada and Mexico for return to the respective governments.[19]

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[18] Gerlin, Inc., which is also a producer of stainless flanges, has its own concerns in relation to that product. Those concerns are addressed in a separate brief filed on Gerlin's behalf today by Mayer, Brown & Platt.

[19] Compensation rights must be "in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action." NAFTA, Art. 802.6 (emphasis added). A system based on actual tariffs paid would be extremely transparent, as at the end of any given period, the governments of Canada and Mexico could easily review official imports statistics and calculate the amount of compensation due.

Because the tariff imposed would act as a source of new revenues to the U.S. Treasury, the return of these revenues to the governments of Canada and Mexico would not require the allotment of funds from any other source within the U.S. government. In other words, the compensation due for the imposition of the tariff would be the value of the tariffs collected. As such, the entire program would be "self-financing."

The self-financing nature of this program would not negate the positive effects of the remedy on domestic producers of stainless fittings. Because tariffs would be collected in relation to imports of stainless fittings from all sources, the remedy would have a beneficial impact on prices in the U.S. market. This would be particularly be true given that imports from Canada and Mexico account for significant shares of all imports and of the U.S. market for stainless fittings. Further, if the compensation revenues were subsumed within the general funds of the governments of Canada and Mexico (i.e., were not passed back to exporters), the compensation to the foreign governments would not allow foreign producers to lower their prices in an effort to overcome the tariff applied on imports of their product into the United States.

A system of self-financing tariff transfers to the governments of Canada and Mexico would provide a degree of relief to the domestic stainless fittings industry and at the same time allow the U.S. government to fulfill its commitments under NAFTA at no net cost to the U.S. Treasury. The use of such a system should allow the President to impose a tariff remedy in relation to imports of stainless flanges and fittings from Canada and Mexico.

IV. IMPORTS FROM DEVELOPING COUNTRIES SHOULD BE INCLUDED IN THE REMEDY IMPOSED ON STAINLESS STEEL FLANGES AND FITTINGS

In its comments submitted on behalf of various foreign producers of steel products in Indonesia, Malaysia, and South Africa, White & Case has put forward a general argument that imports from certain countries within the ITC's Section 201 Investigation on Steel meet the

criteria for exclusion from any remedies imposed under Article 9.1 of the WTO Safeguards Agreement.[20] As an initial matter, the domestic stainless fittings industry notes that Article 9.1 is not codified under U.S. law, and thus there is no requirement that the President address the question of developing countries in fashioning a remedy. At any rate, even if the TPSC and the President wish to examine this issue in the remedy context, as discussed in detail below, imports of stainless flanges and fittings from developing countries do not meet the standards of Article 9.1 and thus should be included within the remedy on this product.

Among the foreign producers on whose behalf the White & Case comments were filed is the Malaysian producer of stainless steel flanges and fittings (as well as welded tubular products), Kanzen Tetsu, Sdn, Bhd ("Kanzen Tetsu"). While White & Case has not made the explicit claim that imports of stainless fittings from Malaysia meet the criteria for exclusion under Article 9.1 of the WTO Safeguards Agreement (imports no greater than 3 percent of total imports of the product) or that developing countries generally meet the criteria (all developing countries with less than 3 percent account for no more than 9 percent of total imports of the product), the domestic stainless fittings industry would like to state affirmatively that neither of the criteria for exclusion are met in relation to stainless flanges and fittings and that all developing country imports should, therefore, be included in the remedy to be imposed on this product group.

The TPSC should be aware that Kanzen Tetsu is one of the largest and most aggressive producers of stainless steel fittings in the world. Imports from Malaysia (Kanzen Tetsu is the country's largest producer) have been a significant contributor to the serious injury suffered by

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[20] Written Comments of PT Gunawan Kianjaya Steel in Indonesia, PT Jaya Pari Steel in Indonesia, Kanzen Kagu, Sdn, Bhd in Malaysia, Kanzen Tetsu, Sdn, Bhd in Malaysia, Southern Pipe in Malaysia, and Duferco Steel Processing (Pty), Ltd. in South Africa, Jan. 4, 2002 ("White & Case Comments").

the domestic industry over the course of the ITC's period of investigation ("POI"). Imports of stainless flanges and fittings from Malaysia accounted for more than 3 percent of total U.S. imports of the product (by volume) in every year from 1996 through 2000, reaching a high of 4.3 percent in 2000.[21] Thus, imports of stainless flanges and fittings from Malaysia do not meet the criteria for exclusion under Article 9.1 of the WTO Agreement on Safeguards.

Nor do imports from developing countries collectively meet the exclusion requirements under Article 9.1. As demonstrated below, imports of stainless flanges and fittings from the top five developing country sources alone accounted for a minimum of 27.2 percent of total U.S. imports of the product in the years 1998 through 2000.

Country	1998	1999	2000
China	1,261	1,694	3,415
India	1,393	1,024	1,719
Philippines	2,839	2,295	1,547
Malaysia	902	988	1,369
Thailand	432	459	817
Five Country Total	6,827	6,460	8,867
Percent of Total	28.7%	27.2%	27.9%
U.S. Import Total	23,768	23,761	31,826

Source: ITC Dataweb, G33.

Thus, in relation to the product category of stainless flanges and fittings, the criteria for exclusion of imports are not met either in relation to Malaysia specifically or in relation to the developing countries generally. For this reason, imports from all developing countries should be included in the remedy imposed in relation to stainless steel flanges and fittings.

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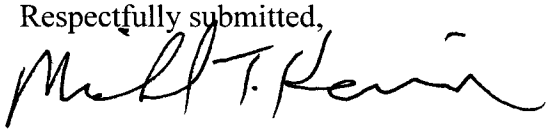
[21] ITC Dataweb, U.S. Imports of Steel Products, Detail by steel product group, G33 - Stainless and Tool Steel: Flanges and Fittings ("ITC Dataweb, G33").

V. CONCLUSION

The domestic producers of stainless steel butt-weld pipe fittings respectfully request that the President impose an ad valorem duty on imports of stainless steel fittings and flanges (in addition to all current duties) from all sources, including Canada, Mexico, and all developing countries, for four years. Such tariff should be set no lower than 40 percent in the first year of relief and be reduced to not less than 37 percent in year two, 34 percent in year three, and 31 percent in year four.

Respectfully submitted,



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